

**[Waiver 1998-1]**

**MONTGOMERY COUNTY ETHICS COMMISSION**

**WAIVER**

**February 6, 1998**

**Request by County employee Jane Lawton**

The commission reviewed a request from the Montgomery County Cable Administrator to waive §19A-11 of the Ethics law to permit the administrator to participate in the cable franchise negotiations between Montgomery County, Maryland, and Prime Cable Corporation.

**PERTINENT FACTS**

According to the request:

1. Montgomery County was negotiating a renewal of its cable franchise and a transfer of the franchise from Southwest Bell-Media Ventures to the Carlyle Group, the Sandler Group and Prime Cable Corporation, etc.
2. The County's Cable Administrator is responsible for the administration of the County's cable franchise agreement and it is necessary that the administrator participate in the franchise negotiations.
3. The administrator had participated in the County's other two cable franchise transfers and the knowledge gained from those dealings is valuable to the County's negotiations.
4. At a meeting of the franchise negotiating group, a partner in the law firm of Hogan and Hartson joined the group of attorneys working on behalf of the cable provider, Prime Cable Corporation.
5. The estranged spouse of the administrator is a partner in the health practice group of Hogan and Hartson, a firm of over 500 lawyers. The partner representing Prime Cable Corporation is in the firm's communications group. They do not work on any matters together.
6. The administrator has been separated from the spouse for four years. All separation agreements have been finalized regarding financial interests and obligations of the parties.

7. In 1993, when the County's cable franchise was transferred from Hauser Communications to Southwest Bell-Media Ventures, Hauser Communications was represented by Hogan and Hartson and the administrator served as Special Assistant to the County Executive. The Ethics Commission granted a waiver to the administrator in order to permit participation in those negotiations.

### **APPLICABLE LAW**

In pertinent part, the conflict of interest provisions of the Montgomery County Ethics Law prohibit a public employee from participating in any matter that affects, in a manner distinct from its effect on the public generally, any business in which a relative of the public employee has an economic interest unless permitted by a waiver. Montgomery County Code, § 19A-11 (a) (1) (C). A public employee also is prohibited from participating in any matter if the public employee knows that any party to that matter is a business in which a relative of the public employee has an economic interest. § 19A-11 (a) (2) (B).<sup>1</sup>

§19A-8 (a) authorizes the Commission, after receiving a written request, to grant a public employee a waiver of the provisions of §19A-11, if it finds that: (1) the best interests of the County would be served by granting the waiver; (2) the importance to the County of a public employee performing his or her official duties outweighs the actual or potential harm of any conflict of interest; and (3) granting the waiver will not give a public employee an unfair advantage over other members of the public.

### **WAIVER DECISION**

The Commission, one member abstaining, found that §19A-11 prohibited the administrator from participating in the cable franchise negotiations without a waiver. However, the Commission also found that the administrator met the waiver requirements of §19A-8 (a), *i.e.*, the best interests of the County would be served by granting the waiver, the importance to the County of the administrator performing official duties outweighs the actual or potential harm of any conflict of interest, and granting the waiver will not give the administrator an unfair advantage over other members of the public.. Therefore, the Commission granted a waiver from the conflict of interest provisions of §19A-11.

In particular, the Commission bases its decision upon: (1) the administrator's unique qualifications to participate in cable franchise matters; (2) the absence of any personal involvement by the administrator's spouse in cable matters; (3) the "final" nature of the separation arrangements with the estranged spouse; and (4) the attenuated connection between the administrator's income and any financial benefit that the spouse might receive from Hogan and Hartson's representation of the cable company.

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<sup>1</sup> For the purposes of Ethics Law, "relative" includes the public employee's spouse. §19A-4 (n) (1).